

DIVISION I

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CACR05-1280

September 13, 2006

VICTOR JAMION

APPELLANT

APPEAL FROM THE POPE COUNTY
CIRCUIT COURT
[NO. CR-04-298]

HONORABLE DENNIS CHARLES
SUTTERFIELD, CIRCUIT JUDGE

V.

STATE OF ARKANSAS

APPELLEE

AFFIRMED

A jury found appellant, Victor Jamion, guilty of fourth-offense driving while intoxicated, for which he was sentenced to seventy-two months' imprisonment and ordered to pay a fine of \$900. On appeal, he argues that the evidence was insufficient to support his conviction, arguing particularly that the State failed to prove that he was in actual physical control of the vehicle. Because appellant did not preserve this argument for appeal, we affirm.

At trial, appellant did not move for a directed verdict challenging the sufficiency of the evidence at either the close of the State's case or at the close of all the evidence. Rule 33.1(a) of the Arkansas Rules of Criminal Procedure provides that "[i]n a jury trial, if a motion for directed verdict is to be made, it shall be made at the close of the evidence offered

by the prosecution and at the close of all of the evidence.” Rule 33.1(c) provides that “[t]he failure of a defendant to challenge the sufficiency of the evidence at the times and in the manner required ... will constitute a waiver of any question pertaining to the sufficiency of the evidence to support the verdict or judgment.” It has often been stated that the failure to challenge the sufficiency of the evidence in the manner mandated by Rule 33.1 will constitute a waiver of any question pertaining to the sufficiency of the evidence on appeal. *See, e.g., Flowers v. State*, 362 Ark. 193, ___ S.W.3d ___ (2005). Because appellant failed to do so, his challenge to the sufficiency of the evidence is not preserved for appellate review, and we affirm his conviction.

Affirmed.

NEAL and VAUGHT, JJ., agree.